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Before the
Federal Communications Commission
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	IB Docket No. <u>95-91</u>
)	GEN Docket No. 90-357
Establishment of Rules and Policies for the)	RM No. 8610
Digital Audio Radio Satellite Service in the)	PP-24
2310 - 2360 MHz Frequency Band)	PP-86
)	PP-87

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

The Consumer Electronics Manufacturers Association ("CEMA"), a sector of the Electronic Industries Association ("EIA"), through undersigned counsel and pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("Commission" or "FCC"), respectfully submits the following Reply to the oppositions filed in response to CEMA's Petition for Reconsideration ("Petition") in the above-captioned proceeding.^{1/} Specifically, CEMA opposes the motion of AMRC for acceptance of its late filed pleading and responds to the oppositions of both AMRC and CD Radio, Inc. ("CD Radio") (collectively "Respondents").^{2/} As demonstrated

^{1/} See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 95-91, GEN Docket No. 90-357, RM No. 8610, PP-24, PP-86, PP-87 (released March 3, 1997) (hereinafter "*Report and Order*"). See also, Consumer Electronics Manufacturers Association, Petition for Reconsideration, IB Docket No. 95-91, Establishment of Rules and Policies for the Digital Audio Radio Service in the 2310-2360 Mhz Frequency Band, March 27, 1997.

^{2/} American Mobile Radio Corporation, Motion for Acceptance of Late-Filed Pleading, IB Docket No. 95-91, Establishment of Rules and Policies for the Digital Audio Radio Service in the 2310-2360 Mhz Frequency Band, May 12, 1997 (hereinafter "AMRC Motion"); American Mobile Radio Corporation, Opposition to Petitions for Reconsideration, IB Docket No. 95-91,

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below, the Respondents' pleadings fail to provide any substantial basis for rejecting CEMA's Petition or for denying CEMA's request that the Commission impose reasonable coverage, performance, and build-out requirements. Nothing raised by CD Radio or AMRC overcomes the fact that the proposed license requirements are necessary to ensure that the applicants fulfil their promise to deliver a seamless, nationwide, satellite DARS service with quality and coverage anticipated by both the Commission and the American public.

DISCUSSION

I. The FCC Should Strike AMRC's Late-Filed Opposition

As a threshold matter, the FCC should reject AMRC's Opposition for failure to abide by the Commission's rules. It is the well established policy of the FCC that it shall not accept late-filed pleadings except in emergency situations.^{3/} According to AMRC's own admission, its Opposition was delivered to CEMA's counsel and filed with the FCC three days late due to an "inadvertent oversight."^{4/} The FCC has held on previous occasions that administrative oversight does not constitute an emergency situation.^{5/} The Commission's rules are clear and insofar as CEMA has only ten days to respond to any *timely* filed replies, AMRC's request is burdensome and unjustified. Accordingly, AMRC's motion should be rejected and its Opposition stricken.

Establishment of Rules and Policies for the Digital Audio Radio Service in the 2310-2360 Mhz Frequency Band, May 12, 1997 (hereinafter "AMRC Opposition"); CD Radio, Inc., Opposition to Petitions for Reconsideration, IB Docket No. 95-91, Establishment of Rules and Policies for the Digital Audio Radio Service in the 2310-2360 Mhz Frequency Band, May 9, 1997 (hereinafter "CD Radio Opposition").

^{3/} See 47 C.F.R. § 1.46 (1996).

^{4/} AMRC Motion at 1.

^{5/} See, e.g., *Application of Motorola SMR, Inc. 900 Mhz SMR Authorization New York MTA*, FCC File No. D031374 (rel. May 7, 1997).

II. The FCC Must Reject the Respondents' Assertions that the Competitive Bidding Process Alone Will Ensure Delivery of High Quality, Nationwide Satellite DARS Service

The Respondents ask the FCC to reject CEMA's request to impose reasonable coverage, quality and build-out requirements. Both CD Radio and AMRC claim that CEMA's request is unnecessary, inefficient or burdensome. The Respondents maintain that economic pressures flowing from the competitive bidding process is sufficient to ensure they will provide quality service to the greatest number of end-users. According to AMRC, its auction bid will create a "powerful commercial incentive to provide a high quality audio service and to maximize as quickly as possible the size of its potential audience."^{6/} In a similar fashion, CD Radio asserts that "[d]ue to the competitive bidding process, spectrum warehousing or delayed service is not a viable concern."^{7/} For these reasons, the Respondents' claim that the Commission need take no further action to ensure the success of satellite DARS.

While CEMA does not doubt the pressure Respondents' face to deliver profitable satellite DARS systems, the question before this Commission is whether it will rely entirely upon ephemeral market forces to guide its spectrum management policy and protect the public interest. Although CD Radio attacks CEMA's Petition as self-serving, it is essential that the Commission recognize that CEMA's petition seeks to ensure that satellite DARS is a viable nationwide service that can be provided without interruption or fading in both urban and rural environments. While CD Radio and AMRC face pressure to become *profitable* as quickly as possible, they currently have no incentive, economic or otherwise, to quickly address difficult and costly technical issues that will otherwise

^{6/} AMRC Opposition at 4.

^{7/} CD Radio Opposition at 9.

prevent nationwide delivery of robust, seamless service in both mobile and urban environments. Indeed, while it may be possible for the applicants to deliver an economically viable service in the short term, CEMA has a legitimate basis for its concern that, absent the proposed service and build-out requirements, satellite DARS will be delivered as a niche service available to a limited number of users located in fixed and rural locations. Accordingly, adoption of the proposed conditions will safeguard against the inefficient and inappropriate use of the DARS spectrum by the applicants.

III. The Proposed Requirements Are Not Unreasonable or Overly Burdensome

Although both CD Radio and AMRC suggest that the imposition of the requested requirements are unnecessary, neither party offers any substantial evidence demonstrating that they are truly unreasonable or costly. Indeed, if the applicants are able to deliver the services in the manner they have so frequently promised, the conditions requested by CEMA should be of no concern. Although AMRC suggests that DARS applicants would have to conduct an unprecedented array of field tests in order to satisfy compliance with the requirement that service be delivered in a continuous and uninterrupted fashion, CEMA disagrees.^{8/} The purpose of the rule is clear: it is not intended to overwhelm or burden the applicants through testing requirements, but rather to ensure that they have undertaken to deliver the service in the fashion both the Commission and American consumers expect.

^{8/} AMRC Opposition at 5.

CONCLUSION


The imposition of the reasonable coverage, performance and build-out requirements requested by CEMA is necessary to ensure the delivery of a seamless, uninterrupted, nationwide DARS service. The Respondents have shown no reason why the Commission should not, as it has in most every other service, impose such conditions on the delivery of satellite DARS service. In accordance with Section 309(j) of the Communications Act, and in order to ensure the viability (and not just the profitability) of satellite DARS, CEMA urges the FCC to reconsider its initial *Report and Order* in the above-captioned proceeding and impose the suggested requirements on the provisioning of satellite DARS service.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 1997, copies of the foregoing Reply to Oppositions to Petition for Reconsideration of the Consumer Electronics Manufacturers Association were delivered via First-Class Mail, U.S. postage prepaid, to the persons listed below.


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